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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 256/2019 & C.M. APPL. 54679/2019 (Stay)**

REV. DINESH DAS

..... Appellant

Through: Mr. Sanjiv Bahl, Mr. Sumit Ahuja,
Mr. Eklavya Bahl and Mr. Apoorva
Bahl, Advocates.

versus

BAPTIST CHURCH TRUST ASSOCIATION & ANR. Respondents

Through: Mr. Vineet Chadha, Mr. Pavit Singh,
Mr. Ajay Kumar, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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11.02.2020

Dr. S. Muralidhar, J.:

1. This appeal by Reverend Dinesh Das, the sole Defendant in CS (OS) 612/2018, is directed against an order dated 21st November, 2019 passed by the learned Single Judge in I.A. No. 16263/2018, filed by the Respondents/Plaintiffs Nos. 1 and 2 under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure ('CPC'), as well as I.A. No. 16323/2019, filed by the Appellant/Defendant under Order XXXIX, Rule 4, CPC. By the said order, the learned Single Judge modified an *ex parte* ad interim order earlier passed on 5th December 2018, and restrained the Appellant/Defendant from exercising any rights as Pastor or otherwise of the Baptist Church, Karol Bagh ('the Church') and its properties under the authority of the Plaintiffs and interfering in any manner whatsoever with the exercise of their rights by

either of the Plaintiffs with respect to the management and control of the Church and its properties.

2. The facts, as averred by the Appellant, are that the Karol Bagh Church was established in the year 1916 and presently counts around 130 families as members of the General Body of the Church. The General Body elects a core group of 11 members, known as the “Deacons Committee”. It is stated that the Pastor of the Church is also elected by the General Body by 2/3rd majority. The Pastor of the Church, by default, becomes the Chairman of the Deacons Committee and carries out day-to-day affairs and activities, spiritual functions and administrative work etc. of the Church with the assistance of the members of the Deacons Committee.

3. The Appellant/Defendant became Pastor of the Church in December, 2007, upon request of the secretary and members of the Deacons Committee of the Church, through an *ad hoc* committee of the Baptist Union of North India (‘BUNI’) (Respondent No. 2/Plaintiff No. 2).

4. The Appellant states that by a letter dated 19th February 2009, BUNI asked the Appellant to withdraw from the functioning of the Church. Thereafter, on 19th February, 2009, i.e. on the same day, the Deacons Committee addressed a letter to the President, BUNI, asking him to rescind his letter asking the Appellant to withdraw from the Church, and allow him to continue to perform the spiritual obligations of the Church. According to the Appellant, he accepted the decision of the Deacons Committee and continued serving the Church. The Appellant avers that, his appointment as

Pastor was confirmed by the Annual General Meeting of the Church held on 29th March, 2009.

5. It is stated that the Baptist Missionary Society ('BMS'), through the Baptist Missionary Society Corporation ('BMSC'), owns several properties, including the property bearing No. 5, Saraswati Marg, Desh Bandhu Gupta Road, Karol Bagh, Delhi, on which the Church is located. It is claimed by the Respondents/Plaintiffs that BMS is duly mutated in the revenue records as the owner of the property.

6. It is further claimed by the Respondents/Plaintiffs that the Respondent No. 1/ Plaintiff No. 1 Baptist Church Trust Association ('BCTA') is a company registered under Section 25 of the Companies Act, 1956, with its office at 19E, Raj Niwas Marg, Delhi. It is claimed that the BCTA was promoted by BMS to aid and further the work of the BMS in India. It was incorporated on 27th May, 1932 in Calcutta, and later on shifted its registered office to Raj Niwas Marg, Delhi. It is stated that in 1958, the BMSC created a trust and different properties situated in different parts of north India were brought under the said trust. It is further stated that by virtue of a 'Deed of Appointment', the Respondent No. 1/Plaintiff No. 1 BCTA is the owner of several properties including the property where the Church is located.

7. It is the case of the Respondents/Plaintiffs, which is not denied by the Appellant, that the Church is affiliated with the Respondent No. 2/ Plaintiff No. 2 BUNI. The case of the Respondents/Plaintiffs is that BUNI is the appointing authority "vested with the power and authority to appoint Pastor of the Church." The procedure for appointment is set down in Rule 12 (c) of

the rules and regulations of BUNI.

8. It appears that on 21st July 2012, one Prem Chand Indriyas filed a suit in the Tis Hazari Courts, New Delhi against one Clement Kotti and others, including the Appellant/Defendant for a permanent and mandatory injunction that he should not be dispossessed from the portion he was occupying on the property of the Church. Respondent No. 2/Plaintiff No. 2 formed a three-member committee with the Appellant/Defendant as its Chairman on 15th January, 2016 to ensure, *inter alia*, that the property of the Church was not encroached upon. The portion of the property occupied by the aforesaid Mr. Indriyas was taken possession of pursuant to the constitution of the said committee on 15th January, 2016.

9. Thereafter, the two members of the aforesaid committee approached the Respondent No. 1 alleging misconduct on the part of the Appellant. It is stated that Respondent No. 2/Plaintiff No. 2 BUNI on 5th October, 2018 issued a notice to the Defendant calling for an explanation from him on a number of complaints that the Respondents had purportedly been receiving against him, and because an FIR No. 128 dated 25th September, 2018 had been registered against the Appellant at the Women Police Station, Gurgaon. The Defendant is stated to have replied to the aforesaid notice on 12th October, 2018.

10. On 15th November 2018, BUNI informed the Appellant that it had appointed a new Pastor, Reverend Anil B. Lall, to take charge of the Sunday service and other church affairs with immediate effect. It is then averred in

the plaint that the Defendant prevented the new Pastor from taking over and also refused to hand over charge or the keys entrusted to him by the Plaintiffs. It was in those circumstances that the aforementioned CS(OS) 612/2018 was filed in this Court, praying, *inter alia*, for a decree of declaration in favour of the Plaintiffs and against the Defendant that the Defendant “ceases to be a Pastor and Chairman of Karol Bagh Baptist Church, Saraswati Marg, Karol Bagh, Delhi, from the date of suspension i.e. 15.11.2018.” Further prayers were to restrain him from interfering in the management, working and control of the Church, and creating hindrances for the newly appointed Pastor as well as in the ingress and egress of the Plaintiffs and their officials and other worshipers into and from the property of the Church. The suit is shown to have been filed on 24th November, 2018.

11. Five days prior to the said suit being filed, on 19th November, 2018, the Baptist Church, Karol Bagh (as Plaintiff No.1) and the present Appellant/ Defendant, as Plaintiff No. 2, filed Civil Suit No. 3421/2018 in the Court of the learned Senior Civil Judge (Central District) at the Tis Hazari Courts, Delhi against the BUNI (as Defendant No. 1); Sumeet Nath, Secretary and Treasurer of the BCTA (as Defendant No. 2); Reverend Solomon David, Secretary and Treasurer of the BUNI (as Defendant No. 3); Clement Kotti and Toni Kotti as Defendant Nos. 4 and 5 respectively; and Station House Officer, Police Station, Karol Bagh, New Delhi as Defendant No. 6. The prayers in Civil Suit No. 3421/2018 were for a decree of permanent injunction, restraining the Defendants therein from interfering in the peaceful affairs of the church. Prayer (b) was for a decree of declaration that the letter dated 6th November, 2018, issued by Secretary and Treasurer,

BUNI on behalf of the BUNI, removing the present Appellant/Defendant (Plaintiff No. 2 therein), from the post of Pastor was “null and void.” It is stated that the summons in the said suit were issued on the same day that the suit was filed.

12. According to the Appellant, no sooner had the summons in the said Civil Suit No. 3421/2018 been served upon the Defendants, they filed the present CS(OS) 612/2018 in this Court from which the present appeal arises.

13. As can be seen from the impugned order dated 21st November, 2019, when CS(OS) 612/2018, along with an application for injunction, was listed on 5th December, 2018, an *ad interim* order came to be passed by the learned Single Judge to the following effect:

“(A) Neither the new Pastor claimed to have been appointed by the plaintiffs nor the defendant to interfere in the faith seekers visiting the Church and praying therein;

(B) Neither of the aforesaid two Pastors to interfere in other carrying out functions with respect to the Church including of conducting prayers, with the new Pastor claimed to have been appointed conducting prayers on Sundays between 9.00 AM to 10.00 AM and the defendant conducting prayers between 10.00 AM to 11.00 AM in the morning;

(C) Similarly, on all other days as well as on other hours of Sunday, the prayer time may be divided equally between the two Pastors;

(D) As far as Christmas prayers are concerned, informed to be between 7.00 PM to 9. 00 PM' in the evening, the time be similarly divided, with the prayers between 7.00 PM to 8.00 PM being conducted by the new Pastor and the prayers between 8.00 PM to 9.00 PM being conducted by the defendant; and

(E) Neither of the two Pastors td take any precipitating action affecting the Church or its properties or causing any harm or loss thereto.”

14. In the written statement filed in the suit, the present Appellant/Defendant, at the outset pleaded that the suit was barred under Section 10, CPC. Specific reference was made to Civil Suit No. 3421/2018 filed by the Defendant before the learned Senior Civil Judge in the Tis Hazari Courts, New Delhi, in which summons had been issued on 20th November, 2018.

15. It appears that apart from the written statement, the Defendant/Appellant also filed I.A. No.3707/2019, under Section 10 of the CPC read with Section 151 thereof, seeking a stay of the proceedings in CS(OS) 612/2018. An order was passed by the learned Single Judge in the said application on 2nd August, 2019, where, in paragraph 2, it is stated that the learned Judge had inquired from the counsel appearing for the Appellant/Defendant whether BCTA, Plaintiff No. 1 in CS(OS) 612/2018, was party to the suit filed by the Appellant/Defendant in the Tis Hazari Courts, Delhi, to which the reply given by counsel for the Appellant/Defendant was, as recorded in paragraph 3, that the Civil Suit No. 3421/ described Defendant No. 2 therein as the Secretary and Treasurer of the BCTA.

16. In paragraph 4 of the said order dated 2nd August, 2019, the learned Single Judge expressed the following view:

“4. In my view the same does not amount to suing Baptist Church Trust Association. Merely suing an office bearer, even if described as an office bearer, is not the same as suing the organisation/institution, of which the said person is the office

bearer. Reference in this regard can be made to *ICICI Bank Ltd. Vs. Satish Kumar Sehrawat 2018 SCC OnLine Del 10727* and *Sanadhan Swimming Club Vs. UOI MANU/DE1156212016* (appeal preferred, where against was dismissed by the Division Bench in *Sanadhan Swimming Club Vs. UOI 2018 SCCOnLine Del 10782*)”.

17. According to the learned Single Judge, suing an official of a company did not amount to suing the company itself, and therefore it could not be said that the BCTA was a party to the previously instituted suit. Thereafter, in paragraphs 7 to 9 of the said order dated 2nd August, 2019, the learned Single Judge observed as under:

“7. Though the application is liable to be dismissed' on this ground only, but since I am engaged in hearing part heard matter, it is deemed appropriate that the counsel for the applicant/defendant has an opportunity to prepare.

8. It is however clarified that any attempt to make Baptist Church Trust Association a party in the previously instituted suit would be viewed as taking unfair advantage of the adjournment.

9. List on 19th November, 2019.”

18. Subsequently, on 21st November 2019, the learned Single Judge passed the impugned order, whereby the applications filed by the Respondents/ Plaintiffs under Order XXXIX, Rules 1 and 2, CPC, i.e. I.A. No. 16263/ 2018, and of the Appellant/Defendant under Order XXXIX, Rule 4, CPC, i.e. I.A. No. 16323/2019, were both disposed of, and the ad interim order dated 5th December, 2018 passed by the learned Single Judge earlier was modified by issuing directions in the manner noticed hereinbefore.

19. This Court has heard the submissions of Mr. Sanjiv Bahl, learned counsel appearing for the Appellant/Defendant and Mr. Vineet Chadha, learned counsel appearing for the Respondents/Plaintiffs.

20. As already noticed hereinbefore, one of the first lines of defence of the present Appellant before the learned Single Judge in the written statement filed by him in CS(OS) 612/2018 was Section 10, CPC, which reads as under:

“10. Stay of suit:

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

21. A bare reading of Section 10, CPC reveals that in order for the provision to get attracted, there has to be a previous suit in which “the matter in issue” is also “directly and substantially in issue” in such subsequent suit. Further, the previous suit has to be “between the same parties, or between parties under whom they or any of them claim litigating under the same title.” Thirdly, such suit could be either pending “in the same or any other Court in India having jurisdiction to grant the relief claimed.”

22. In the order dated 2nd August 2019, while dealing with the application filed by the Defendant under Section 10, CPC, which is stated to be pending still, the learned Single Judge appears to have formed a view that the Appellant's defence under Section 10, CPC was untenable only because the BCTA, which is Plaintiff No. 1 in CS(OS) 612/2018, had not been as such been impleaded as a defendant in the previous Civil Suit No. 3421/2018 filed by the Appellant.

23. On a plain reading of Section 10 CPC, this position appears to be incorrect. The very object of Section 10 CPC is to prevent parallel proceedings in the form of two suits concerning 'the same matter in issue'. As explained by the Supreme Court in *National Institute of Mental Health and Neuro Sciences v. C Parameshwara AIR 2005 SC 242*:

"The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the -same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally

in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical.”

24. There can be no doubt that the subject matter of both the suits is substantially the same when one compares prayer (a) in CS(OS) 612/2018 to prayer (b) in Civil Suit No. 3421/2018, pending in the Court of the learned Senior Civil Judge, Tis Hazari Courts, New Delhi, both of which seek a declaration as to the effect of the suspension of the Appellant as the Pastor of the Church. It is also seen that the BUNI, which is Plaintiff No. 2 in CS(OS) 612/2018 is in fact Defendant No. 1 in Civil Suit No. 3421/2018. To that extent, the learned Single Judge is incorrect in arriving at the conclusion that only because the BCTA as such is not a party in Civil Suit No.3421/2018, the entire Section 10 CPC defence has to fail. This is even more significant in light of the fact that even the Respondents’/Plaintiffs’ case in CS(OS) 612/2018 is that the BUNI has the power to appoint or remove a Pastor. As noted hereinabove, the BUNI is very much a party in the previous Civil Suit No. 3421/2018 filed by the Appellant.

25. In the circumstances, the Court holds that the view expressed by the learned Single Judge in the order dated 2nd August, 2019 is tentative or *prima facie*, and not final, even as regards the Section 10 CPC defence.

26. It is trite that while dealing with the question of whether the ad interim *ex parte* order granted on 5th December, 2018 should either be confirmed as such, or vacated, as prayed for by the Appellant/Defendant, or further modified, it was incumbent on the learned Single Judge to first deal with the Section 10 CPC issue in the impugned order. The title of Section 10, CPC

itself is 'Stay of Suit'. In other words, if an argument proceeding from Section 10, CPC has merit, then the suit in which such an application is filed obviously cannot proceed. Therefore, it was imperative for the learned Single Judge to have first dealt with the issue concerning Section 10 CPC, once the Appellant/Defendant expressly took it as a defence in his written statement, apart from filing a separate application seeking the stay of further proceedings in the suit.

27. Indeed, if there was merit in the contention of the Appellant/Defendant that the suit filed by him earlier, which was pending, involved an issue which was directly and substantially in issue also in CS(OS) 612/2018, and at least some of the parties in CS(OS) 612/2018, i.e. the BUNI and the present Appellant/Defendant, were also parties in the previous suit, that by itself should have been sufficient for the learned Single Judge to have dealt with the Section 10 CPC defence, before deciding on whether to confirm, vacate or modify the interim order dated 5th December, 2018. On perusal of the impugned order dated 21st November 2019, this Court finds that apart from noticing that such a defence had been taken by the Appellant/Defendant, the learned Single Judge has not actually dealt with that issue at all. This, in the considered view of this Court, is sufficient for this Court to set aside the impugned order, as the Section 10, CPC defence really goes to the root of the matter.

28. For the aforementioned reasons, this Court sets aside the impugned order dated 21st November, 2019 passed by the learned Single Judge, and restores the applications disposed of by that order to the file of the learned Single

Judge. As a result, the earlier interim order dated 5th December, 2018 stands revived.

29. Since the application filed by the Appellant/Defendant, being I.A. No. 3707/2019 is pending before the learned Single Judge, that application is directed to be decided first, independent of any observations made by the learned Single Judge in the order dated 2nd August, 2019. It will be open to the Respondents/Plaintiffs to file a reply, if they so wish, to that application within four weeks from today, and the Appellant/Defendant is permitted to file a rejoinder thereto before the next date fixed before the learned Single Judge i.e. 17th April, 2020. Depending on the decision on the said application, the learned Single Judge will thereafter deal with the pending applications under Order XXXIX Rules 1 and 2 CPC, and Order XXXIX Rule 4 CPC in accordance with law.

30. The appeal is allowed in the above terms. The pending application is also disposed of. No costs.

31. Order *dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 11, 2020
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